

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WAPATO HERITAGE, LLC, a
Washington Limited Liability
Company; KENNETH EVANS; JOHN
WAYNE JONES; and JAMIE JONES,
individual residents of
Washington State,

Plaintiffs,

v.

SANDRA D. EVANS, an
individual not a resident of
Washington State,

Defendant.

NO. CV-07-314-EFS

**ORDER MEMORIALIZING AND
SUPPLEMENTING THE COURT'S
SEPTEMBER 13, 2011 ORAL
RULINGS**

A hearing occurred on September 13, 2011. Plaintiffs Wapato Heritage, LLC, Kenneth Evans, the late John Wayne Jones, and Jamie Jones were represented by Bruce Johnston and Dale Foreman, who appeared by telephone. Charles Steinberg appeared on the behalf of Defendant Evans, who participated by telephone. Also participating in the conference by telephone was attorney Mary Wynne. Before the Court were several motions filed by Plaintiffs: Motion to Strike Ms. Wynne's Third Notice of Appearance and Declaring Ms. Wynne Disqualified from Representing Defendant Evans and to Stay All Proceedings Initiated by Ms. Wynne Purportedly on Behalf of Defendant Evans, ECF No. [837](#); Motion for Order

1 Holding Defendant Evans in Contempt, ECF No. [843](#); and Motion to
2 Reconsider In Part Order on Exemption, ECF No. [851](#). After reviewing the
3 submitted material and relevant authority and listening to the hearing
4 participants, the Court was fully informed. This Order supplements and
5 memorializes the Court's oral rulings striking the documents filed by Ms.
6 Wynne on Defendant Evans' behalf, declining to sanction Defendant Evans,
7 and modifying the Court's Receivership Order.

8 **A. Ms. Wynne's Status as Counsel**

9 In February 2011, this Court granted Ms. Wynne's motion to withdraw
10 as counsel, ECF No. [739](#), given her irreconcilable conflict of interest with
11 her client Defendant Evans because Defendant Evans filed an ineffective-
12 assistance-of-counsel claim against Ms. Wynne in Washington state court,
13 as well as a claim against Ms. Wynne's husband, Dan Gargan, who served,
14 and apparently still serves, as Defendant Evans' financial advisor. ECF
15 No. [759](#). On March 24, 2011, Mr. Steinberg appeared on Defendant Evans'
16 behalf, ECF No. [753](#), and has continued to represent Defendant Evans.

17 Yet, on August 16, 2011, Ms. Wynne filed a Notice of Appearance "for
18 the Defendant/Appellant Sandra D. Evans," ECF No. [826](#), in order to appeal
19 the Court's appointment of a receiver for Defendant Evans, ECF No. [777](#)
20 ("Receivership Order"). ECF No. [832](#).¹ Ms. Wynne filed this document

21
22 ¹ Ms. Wynne also personally filed (on her own behalf) a notice
23 appealing the Receivership Order. ECF Nos. [827](#) & [829](#). Ms. Wynne is not
24 prohibited from seeking relief on her own behalf; it is the Ninth
25 Circuit's task to determine the success of Ms. Wynne's personal appeal.

1 without discussing an appeal with Mr. Steinberg, and at no time did Mr.
2 Steinberg agree to its filing; in fact, he learned of the appeal after
3 it was filed.

4 Plaintiffs filed this motion asking the Court to strike these
5 filings and to declare that Ms. Wynne may not appear in this lawsuit. In
6 response, Defendant Evans maintains that 1) Ms. Wynne may appear on
7 Defendant Evans' behalf for appeal purposes and 2) the notice of appeal
8 divested this Court of jurisdiction to address this issue.

9 First, the Court finds it has jurisdiction to address the instant
10 motion, which pertains to who may appear before this Court. Although a
11 notice of appeal carries jurisdictional significance, the district court
12 is divested of jurisdiction only over those aspects of the case that are
13 involved in the appeal. *Griggs v. Provident Consumer Discount Co.*, 459
14 U.S. 56, 58 (1982); *United States v. Ienco*, 126 F.3d 1016, 1018 (7th Cir.
15 1997) (The goal is to prevent the district court and the appellate court
16 from "stepping on each other's toes."). The issue of who may appear
17 before the Court is an ancillary matter to the appealed Receivership
18 Order; the Court retains jurisdiction to address this motion, as well as
19 the motions for contempt and reconsideration.

20 Turning to the question of whether it is appropriate for Ms. Wynne
21 to have filed a notice of appearance in this Court, the Court finds it
22 was not appropriate. If Defendant Evans desired to appeal the
23 Receivership Order, her recourse was to have current counsel Mr.
24 Steinberg file the notice of appeal. Ms. Wynne proffers that she did not
25 intend for this document to be filed in this Court but merely provided
26 it to the Court as a courtesy copy of what she filed in the Ninth

1 Circuit. However, Federal Rule of Appellate Procedure 4(a)(1) clearly
2 states that "the notice of appeal required by Rule 3 must be filed with
3 *the district clerk* within 30 days after the judgment or order appeared
4 from is entered." (emphasis added); see also Fed. R. App. Proc. Form 1
5 (utilizing the district court's case caption, thereby indicating that
6 filing with the district court is required for an effective appeal).
7 Given Ms. Wynne's continued irreconcilable conflict of interest with
8 Defendant Evans and her previous Court-granted motion to withdraw based
9 on this conflict of interest, Ms. Wynne's notice of appearance is
10 stricken. Allowing Ms. Wynne to appear on Defendant Evans' behalf would,
11 without question, raise conflict-of-interest issues under the Washington
12 Rules of Professional Conduct. For these same reasons, as well as the
13 failure to obtain permission from Defendant Evans' current counsel to
14 file the appeal on Defendant Evans' behalf, the notice of appeal filed
15 by Ms. Wynne on Defendant Evans' behalf, ECF Nos. [827](#) & [832](#), is stricken.

16 Accordingly, Plaintiff's Motion to Strike Ms. Wynne's Third Notice
17 of Appearance and Declaring Ms. Wynne Disqualified from Representing
18 Defendant Evans and to Stay All Proceedings Initiated by Ms. Wynne
19 Purportedly on Behalf of Defendant Evans is granted (notices of
20 appearance and appeal are stricken) and denied as moot (because the
21 notice of appeal is stricken, there is no appeal of the Receivership
22 Order by Defendant Evans to stay).

23 **B. Plaintiff's Motion for Order Holding Defendant Evans in Contempt**

24 On August 22, 2011, Defendant Evans, through Mr. Gargan, filed a
25 Notice of Appeal to the Bureau of Indian Affairs (BIA) and Office of
26 Special Trustee (OST) of the Court's August 15, 2011 Order, ECF No. [825](#),

1 which directed OST and BIA to either deposit Defendant Evans' MA-10
2 monies into the Court's Registry or to directly forward the monies to the
3 Receiver. Plaintiffs ask the Court to find Defendant Evans in contempt
4 for this collateral attack of the Court's August 15, 2011 Order and to
5 sanction Defendant Evans \$2,000 per day. Defendant Evans opposes the
6 motion, contending she rightfully exercised her administrative rights
7 relating to restrictions on an Individual Indian Money (IIM account).

8 At the end of August 2011, the BIA forwarded the most recent MA-10
9 payment to the Receiver. Accordingly, this motion is largely moot;
10 however, the Court declines to sanction Defendant Evans for her
11 submission to the BIA. Defendant Evans possessed the statutory right to
12 submit a challenge to the BIA, see 25 C.F.R. §§ 115.600 - 115.620,
13 although her challenge was unsuccessful largely because this Court's
14 rulings interpreting the Settlement Agreement were affirmed by the Ninth
15 Circuit. Yet, the Court is concerned about whether Defendant Evans
16 continues to be influenced by Ms. Wynne and Mr. Gargan, both of whom have
17 irreconcilable conflicting interests with Defendant Evans given her
18 ongoing claims in state court. The Court declines to address this issue
19 any further at this time.

20 **D. Plaintiffs' Motion to Reconsider In Part Order on Exemption**

21 Plaintiffs ask the Court to modify its August 15, 2011 Order, ECF
22 No. [825](#), to find that MA-10 monies can be used to satisfy the attorneys-
23 fees judgment, ECF No. [708](#) (totaling \$623,521.50). Defendant Evans
24 opposes the motion. The Court finds reconsideration is appropriate in
25 light of the following paragraph in the Settlement Agreement, which
26 Plaintiffs bring to the Court's attention:

1 In the event of any action or proceeding at law or in equity
2 to interpret or enforce the terms of, or obligations arising
3 out of this Agreement, or to recover damages for the breach
4 hereof, or to compel performance hereunder, the party
5 prevailing in any such proceeding or action, including
6 bankruptcy court proceedings and including any appeals, shall
7 be entitled to recover attorneys' fees and costs incurred by
8 the prevailing party, whether incurred before or after the
commencement of such action or proceeding. The attorneys' fees
shall include those incurred in bringing such suit and/or
enforcing any judgment granted therein, all of which shall be
deemed to have accrued upon commencement of such action and
shall be paid whether or not such action shall contain a
specific provision providing for the recovery of attorneys'
fees and costs incurred in enforcing such judgment.

9 ECF No. [854](#)-1 at 2. Like the other provisions of the Settlement
10 Agreement, this language was agreed to by Defendant Evans and she asked
11 BIA Judge Stancampiano to approve it. After approving the Settlement
12 Agreement, Judge Stancampiano did ask the parties to identify whether BIA
13 approval was needed. Judge Stancampiano made this request to ensure that
14 he had not erred when entering his final probate order approving the
15 Settlement Agreement: at no time was Judge Stancampiano's final probate
16 order set aside.

17 The Court finds its affirmed rulings relating to the Settlement
18 Agreement are still correct and finds the attorneys-fees provision
19 contained therein was inextricably intertwined with the MA-10 "loan"
20 provision. Accordingly, 28 U.S.C. § 410's "except with the approval and
21 consent of the Secretary of the Interior" language is satisfied and
22 Defendant Evans' IIM monies from the MA-10 payments may be utilized to
23 satisfy the principal of both outstanding judgments, ECF Nos. [625](#) & [708](#),
24 i.e., § 410's restriction does not apply to the unpaid \$1,191,500.94
25 ("loan") and the \$623,521.50 (attorney's fees and costs), for a total of
26

1 \$1,815,022.44. The Court hereby modifies its August 15, 2011 Order, ECF
2 No. [825](#), as detailed below.

3 **D. Conclusion**

4 For the above-given reasons, **IT IS HEREBY ORDERED:**

5 1. Plaintiffs' Motion to Strike Ms. Wynne's Third Notice of
6 Appearance and Declaring Ms. Wynne Disqualified from Representing
7 Defendant and to Stay All Proceedings Initiated by Ms. Wynne Purportedly
8 on Behalf of Defendant Evans, **ECF No. [837](#)**, is **GRANTED** (Ms. Wynne's notice
9 of appearance and appeal filed by her on Defendant Evans' behalf are
10 stricken) **and DENIED AS MOOT** (the appeal filed by Ms. Wynne on Defendant
11 Evans' behalf need not be stayed because the notices are stricken) **IN**
12 **PART.**

13 2. The Clerk's Office is directed to **STRIKE** the following filings:

- 14 • Ms. Wynne's August 17, 2011 Notice of Appearance, **ECF No.**
15 **[826](#)**;
- 16 • the August 17, 2011 Notice of Appeal, **ECF Nos. [828](#) & [832](#)**,
17 which was filed by Ms. Wynne on Defendant Evans' behalf.

18 3. Plaintiffs' Motion for Order Holding Sandra Evans in Contempt,
19 **ECF No. [843](#)**, is **DENIED**.

20 4. Plaintiffs' Motion to Reconsider In Part Order on Exemption,
21 **ECF No. [851](#)**, is **GRANTED**. At its discretion, the OST and BIA may either
22 1) deposit any future MA-10 quarterly payments made to Defendant Evans'
23 IIM account into the Court's Registry or 2) submit them to the receiver
24 (pursuant to his instructions), until an amount equal to \$1,815,022.44
25 has been paid. If OST or BIA elect to deposit these funds into the
26 Court's Registry, the Clerk of Court shall promptly forward these funds

1 to the Receiver. The Receiver shall provide OST with updates, at least
2 quarterly, as to what portion of the \$1,815,022.44 remains unpaid.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter
4 this Order and provide copies to all counsel, Ms. Wynne, Pamela De Rusha,
5 and the Financial Administrator, and the Ninth Circuit.

6 **DATED** 27th day of September 2011.

7
8 s/ Edward F. Shea

EDWARD F. SHEA

9 United States District Judge

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